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- 6.—*Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.* By OCTAVIUS PICKERING, Counsellor at Law. No. 1. VOL. III. Boston. Harrison Gray. 1826. 8vo. pp. 152.

THE Reporter has here assumed a new form of publication, which we think will be highly acceptable to the profession, and useful to the public. We presume his plan is to furnish the practitioner and student of the law with recent decisions of our Supreme Court, by promulgating them from time to time in the shape of a well sized pamphlet; instead of waiting for the tardy accumulation of a whole volume.

The complexity of human affairs, and the infinite variety of combinations of which they are susceptible, must forever present new questions of law to the mind of the most accomplished jurist, depending often upon nice principles, remote analogies, and the most delicate shades of distinction. The improvements and changes which are constantly taking place in the arts of life, and the relations of society, give birth to new series of doubts and difficulties in the application of legal principles to individual rights and the interests of mankind, which can be finally settled only by a new series of adjudications. It is highly important to the professional laborer to be enabled to keep pace with these, by the means of early and authentic publications. As the decisions of our court are rendered before the bars of different counties, and it is not the habit of our lawyers to follow its circuits, they have no other means of becoming acquainted with what has been decided in distant parts of the commonwealth. The profession necessarily rely upon the latest report for the law of the day; and many a client might have been saved the expense and vexation of a suit instituted and resisted for the purpose of ascertaining and settling some point of glorious uncertainty in the law, if his professional adviser had been aware of some recent adjudication, which had not yet made its way into print.

The present, which is the first part of Mr Pickering's third volume, contains a report of decided cases, which were argued in Suffolk during the March term of 1825, but upon which final judgments were not rendered, at least in most instances, until the March term of the present year. We notice among them several which are of great importance to the community. The case of the Commonwealth *versus* Harrington, in which an indictment against the defendant for letting a house to a woman of ill fame, knowing that it was to be used for purposes of prostitution, was sustained upon

the broad principle, that the common law will punish *proprio vigore* in every case of exciting, aiding, and encouraging another to commit a misdemeanor, as being in itself a misdemeanor on the part of the abettor, is one which will contribute largely to the preservation of the peace and good morals of society. Merchants and insurers will be glad to learn something upon a question so commonly vexed among them, and so frequently misunderstood by all classes, as what constitutes a technical *bilging*. The case of *Elbery versus Merchants' Insurance Company* settles that there must be an actual *breach* by violence in some part of the vessel, and that the mere gaping of the seams, although occasioned by some formidable accident of the sea, and producing all the bad consequences of a fracture in the ship's bottom, is not a *bilging*. If we are right, however, in our present recollections of the case of *Peele versus* the same insurance company, recently determined by the first Circuit Court of the United States, the community at large may still be somewhat puzzled between the two decisions. At any rate room enough is yet left for the profession to exercise their wits, in cases which may hereafter arise, upon a question so simple at first view. Banks and depositors will be interested to find it established, that in suits between them the books of the bank are competent evidence to show receipts and payments of money, even though the clerk who made the entries cannot be produced to swear to them; which point, among others, we perceive was adjudged in the case of the *Union Bank versus Knapp*.

There are many other cases of considerable technical interest, and some involving matters of extensive practical consequence. Among the latter we notice that of *Dawes, Judge &c. versus Head* and others, in which the important questions were raised and discussed at the bar, with great ability and very learned research, as to the relative rights of foreigners and our own citizens in regard to the distribution among creditors of property here, belonging to the estates of foreign bankrupts, or persons deceased abroad; and the extent to which a noble species of international comity ought to be carried, in taking judicial cognizance of the laws and institutions of other countries, affecting the rights of their subjects, consistently with that protection which every sovereign is bound, as a primary duty, to render to its own, in cases of conflicting interests. These questions were supposed to arise upon the claims of sundry creditors here to appropriate funds in the hands of an ancillary administrator to the discharge of their own debts in *full*, while the same funds were required by the original administrator abroad, to be divided ratably among the creditors at large of the estate, the whole of the proceeds of which was supposed to be inadequate to pay all the demands against it. The case turned, how-

ever, upon other and more technical considerations ; so that we must still say, in the language of the court, that these questions, ' which are of a novel and delicate nature, though often glanced at, do not appear to have been decided in this, or any other State of the Union.' The case, however, is still of great value, not only for the large and enlightened views thrown out by the learned Chief Justice for consideration, rather than as matter of adjudication, but also as containing a copious index to the law upon this interesting topic. The extensive intercourse of a country so commercial as ours with foreign nations, cannot fail ere long to present this question to the court in some tangible and inevitable shape.

The profession are greatly indebted to Mr Pickering for the industry, fidelity, and professional skill which he has exercised in reporting for several years the cases argued and determined in the highest court of Massachusetts. We are not aware that any contemporary reporter, in either of the United States, is prosecuting his laborious task more ably, or in a style of greater general utility ; and we shall be glad to see in due process of time as many volumes of his reports as have been put forth by the learned reporter of New York. In the volumes already edited, the arguments of counsel are generally given succinctly and clearly upon the real points in the case ; the marginal notes are well digested ; and the index is accurate and sufficiently copious. We trust and believe that this gentleman will be remunerated for the additional trouble and expense of publishing in numbers, to which he has now put himself, by an increased circulation of his work. The recent date of the decisions will make them an object of greater curiosity and interest ; and many of the learned pursuers of the law, who do not find it is easy to set apart enough from their professional emoluments to purchase a thick octavo of six hundred pages, may probably be induced to try the experiment, whether four pamphlets of one hundred and fifty pages each come to the same thing in the end.

The execution of the present number is in every respect creditable, and much freer from typographical errors than the preceding volumes. Indeed we have observed none of much consequence upon a hasty reading. It would be desirable that each number should so terminate, if possible, as not to break a case in the midst, which is now done with *M' Mechan versus Griffing* ; but where a volume is to be formed from the several parts, it will manifestly be very difficult to avoid this always.
